IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4155 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DESHABHAI BHALABHAI SONDARWA & 1 - Petitioner(s)

Versus

DY COLLECTOR & 3 - Respondent(s)

==========

Appearance :

MR SV PARMAR for Petitioner(s) : 1 - 2.
MR MR MENGADE ASSTGOVERNMENT PLEADER for Respondent(s) : 1 - 2, 4,
MR MEHUL S SHAH for Respondent(s) : 3,
MR SUREN M SHAH for Respondent(s) : 3,
==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order of

allotment made in favour of the respondent No.3 dated 5.9.83 purported to be under the provisions of the Gujarat Agricultural Lands Ceiling Act. It appears that earlier the petitioner had preferred writ petition being Special Civil Application No.3121 of 1986 and the petitioner withdrew the same to file an appeal as provided under Section 29(3) of the Gujarat Agricultural Lands Ceiling Act, 1960-. It appears from the record that subsequently the petitioner has approached the authority, more particularly, the Additional Chief Secretary (Appeals), Revenue Department, Ahmedabad on 6.4.1987 however, the said Revision Application/appeal was returned by the Additional Chief Secretary, Revenue Department by its communication dated 12/16.6.1987 on the ground that there is no final order passed by the Collector and/or Dy. Collector allotting/granting the land to the respondent No.3. The petitioner has therefore preferred present Special Civil Application for the aforesaid reliefs.

2. In view of the fact that when the petitioner was relegated to file an appeal under Section 29(3) of

the Act, the appellate authority i.e. Additional Chief Secretary (Appeals), Revenue Department should have decided the appeal on merits rather than returning the same on the ground that no final order is passed. It is required to be noted that the as such the respondent No.3 is handed over the possession of the land in question and if the final order is not passed as per the opinion of the Additional Chief Secretary (Appeals) dated 12/16.6.1987 then how the respondent No.3 can be in possession of the land in question. The fact remains that the respondent No.3 is in possession of the land in question. Under the circumstances, the Additional Chief Secretary (Appeals) was not justified in returning the appeal to the petitioner.

3. Under the circumstances, without expressing any opinion on merits of the case, the Additional Chief Secretary (Appeal), Revenue Department is directed to decide and dispose of the appeal on proper presentation by the petitioner against the order passed by the Dy. Collector, Gondal/Collector, Rajkot in allotting the land to the respondent No.3 as early

as possible preferably within 6 months from the date of receipt of such presentation of appeal.

4. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

=kailash=